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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1985

No. _____

COAKLEY & WILLIAMS, INC.,

Petitioner

v.

SHATTERPROOF GLASS CORPORATION,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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February 26, 1986

QUESTION PRESENTED

Whether a defense to the applicability of Title 2 (Sales) of the Uniform Commercial Code available to a middleman contractor (based on the contractor's work as an installer providing services) in a suit brought by the ultimate purchaser of the goods is also available to the manufacturer-supplier of those goods to the middleman contractor?

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The Petitioner Coakley & Williams, Inc. respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on December 2, 1985.

OPINIONS BELOW

The opinion of the Court of Appeals, reported at 778 F.2d 196 (4th Cir. 1985), appears in the Appendix hereto, A-1 to A-10. The opinion of the District Court for the District of Maryland is unreported and is contained in the transcript of proceedings of the trial; the portion of the transcript containing the District Court's opinion is reprinted in the Appendix at A-11 to A-33.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on December 2, 1985 and this petition for certiorari was filed with 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

Petitioner, Coakley & Williams, Inc. ("Coakley"), acting as the general contractor in the construction of an office building, entered into a contract with Washington Plate Glass Co. ("Washington") under which Washington was to furnish and install a glass curtain wall to be of a uniform gold color.

The contract required Washington to furnish and install vision glass panels, spandrel glass panels, aluminum curtain wall and clips, fasteners and gaskets. The spandrel glass was opaque and not transparent, and covered that portion of the building between the floors. An essential element of the understanding between Coakley and Washington was that the appearance and color of the vision panels and spandrel panels was to be identical when viewed from the exterior of the building.

Washington sent Respondent, Shatterproof, a glass manufacturer, a purchase order for the vision and spandrel panels. This purchase order specified that delivery was to be made to Washington at Coakley's construction site in care of Coakley.

Shatterproof supplied the glass to Washington and installation was made by Washington. The aluminum curtain wall was purchased by Washington from another firm. Shatterproof did not install the glass or furnish any services but only sold the glass to Washington.

Within a few months after installation, the spandrel glass panels (as distinguished from the vision glass) began to become discolored, resulting in a lack of uniformity among the individual spandrel units and with the vision panels.

After protests by Coakley, Washington replaced the spandrel glass panels at no cost to Coakley. Shatterproof supplied the

replacement units at its expense and paid Washington for the labor in re-installation.

However, the replacement product also became discolored. Coakley protested to Washington and to Shatterproof. Despite repeated requests by Coakley, Shatterproof refused to replace the discolored glass.

As a result, Coakley commenced this litigation (Washington in the meantime having gone out of business), claiming breach by Shatterproof of implied warranty under the UCC. Commercial Law Article, Annotated Code of Maryland, Section 2-314 and 2-315. (The requirement of privity had been abolished by Maryland statute).

Shatterproof's defense was that since Coakley purchased not only goods from the wholesaler intermediary, Washington, but also purchased services from Washington (thereby excluding the contract between Washington and Coakley from the UCC),

Shatterproof was relieved of any liability to Coakley under the UCC as a seller of goods.

The District Court granted a directed verdict in favor of the Defendant (A-11) and the Fourth Circuit Court of Appeals affirmed (A-1).

REASONS FOR GRANTING THE WRIT

The question of whether the ultimate purchaser of goods sold by a manufacturer may hold that manufacturer responsible for the implied warranties of merchantability under the Uniform Commercial Code regardless of whether the ultimate purchaser purchases only goods or purchases both goods and services is a question of substantial importance to business and commerce throughout the United States.

The District Court and the Appellate Court held that no consideration should be

given to the nature of the contract between the manufacturer and the wholesaler middleman because those Courts concluded that the U.C.C. was not applicable to the contract between the wholesaler middleman and the ultimate purchaser.

Thus those Courts held that although the manufacturer was clearly only a seller of goods, it could avail itself of any defense the wholesaler middleman might have had because of the wholesaler middleman's role furnishing services.

The parties agree that the contract between the wholesaler middleman and the manufacturer in this case is a contract for the sale of goods governed by Title 2 (Sales) of the Commercial Law Article of the Maryland Annotated Code ("UCC").

Both Petitioner and Respondent agree that the requirement of privity for suits under the UCC was abolished by statute in

Maryland by Chapter 249, Laws of Maryland, 1969.

A manufacturer is and should be subject to the UCC where its contract with the wholesaler is only for the sale of goods and involves no services, regardless of the nature of the contract between the wholesaler and the ultimate purchaser.

The nature of the contract between the manufacturer and the wholesaler should determine the manufacturer's liability under the U.C.C., not the nature of the contract between the wholesaler and the ultimate purchaser.

It makes no sense to permit a manufacturer who sells defective goods and provides no services to claim that the law (the UCC) relating to the sale of goods does not apply to those goods because someone else (a wholesaler middleman) provides services relating to those goods. This is particularly so when the services have

nothing to do with the reason for the defects in the goods sold by the manufacturer.

To hold otherwise is to say that a manufacturer of goods which are defective is liable for implied warranties under the UCC to ultimate purchasers who purchase from an intermediary who furnishes no services in connection with the resale. But, according to that reasoning, the manufacturer is not liable to ultimate purchasers who purchase from intermediaries which furnish services in connection with the resale even though the services have nothing to do with the defect in the goods or the cause of the defect.

The result of the District Court and the Appellate Court's decisions is that although a middleman may sue a manufacturer for implied warranties for defective goods sold by a manufacturer, an ultimate purchaser who also purchases services from

the middleman may not do so even though the same defective goods are involved.

The nature of the contract between the ultimate purchaser and the wholesaler middleman as a contract for the sale of goods and services is totally distinct from the character of the contract between the wholesaler middleman and the manufacturer. The ultimate purchaser should be able to hold the manufacturer for breach of the implied warranties of merchantability and fitness for a particular purpose under the UCC.

The abolition by the Maryland General Assembly of the requirement of privity permits the ultimate consumer in Maryland to sue the original seller of goods. Chapter 249, Laws of Maryland, 1969. Commercial Law Article, Annotated Code of Maryland, Sections 2-314 and 2-318. Firestone Tire and Rubber Company vs. James H. Cannon, 53 Md.App. 106, 452 A.2d 192 (1982). In

Firestone, the Court said that in Maryland the General Assembly eliminated the requirement of privity "by expanding the definition of seller in §2-314(1) and expanding the beneficiaries of implied warranties in §2-318".

Further, the Court in Firestone, said,

> The undeniable objective of the Legislature in the 1969 enactment was to give greater protection to consumers against defective products by expanding the number and types of people who could be liable for the harm done by such products.

To deny the benefits of the UCC to an ultimate purchaser (where the requirement of privity has been abolished) because an intermediary has provided services which have nothing to do with the defect in the goods is to give a "windfall" to the seller who was only a seller of goods and with respect to his immediate purchaser (the intermediary) was subject to the UCC.

The holding of the District Court and the Appellate Court unfairly relieves sellers from responsibility for defects in their products once they enter the stream of commerce if it happens that the products are ultimately sold as part of service contracts.

In Santor v. A&M Karagheusian, 44 N.J. 52, 207 A.2d 305 (1965), the New Jersey Superior Court considered a suit against a manufacturer by a purchaser of installed carpeting and said,

> The manufacturer is the father of the transaction. He makes the article and puts it in the channels of trade for sale to the public. No one questions the justice of a rule which holds him liable for defects arising out of the design or manufacture, or other causes while the product is under his control. After completion the article may pass through a series of hands, such as distributor and wholesaler, before reaching the dealer at the point of ultimate intended sale. The dealer is simply a way station, a conduit on its trip

> from manufacturer to consumer. For these reasons in the recent past the courts of many jurisdictions, in an endeavor to achieve justice for the ultimate consumer, have imposed an implied warranty of reasonable fitness on the person responsible for the existence of the article and the origin of the marketing process.

That decision states clearly the proposition that a manufacturer which puts goods into the stream of commerce should be responsible to the ultimate purchaser; no valid reason can be given why that manufacturer should be excused from his responsibility because one of his distributors performs services for the ultimate purchaser.

The decisions of the District Court and the Appellate Court would produce a bizarre result which is contrary to the basic policy guidelines established by the UCC.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Fourth Circuit.

Respectfully submitted,

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